

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
October 14, 2003 Session

**STATE OF TENNESSEE v. LESTER ARNOLD CLOUSE**

**Direct Appeal from the Criminal Court for Putnam County  
No. 99-0260, 01-0360 Lillie Ann Sells, Judge**

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**No. M2002-01880-CCA-R3-CD - Filed February 2, 2004**

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Defendant, Lester Arnold Clouse, was indicted by the Putnam County Grand Jury on 29 counts of setting fire to land in violation of Tenn. Code Ann. § 39-14-303. Following a jury trial, Defendant was convicted of twelve counts of setting fire to land. Seventeen counts were nolle. Following a sentencing hearing, Defendant was sentenced to six years on each of the twelve counts. The trial court ordered some of the sentences to be served consecutively and some to be served concurrently, resulting in a total effective sentence of 18 years. In this direct appeal, Defendant argues that the evidence at trial was insufficient to support his convictions. After a careful review of the record, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court Affirmed**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID G. HAYES and JERRY L. SMITH, JJ., joined.

John E. Appman, Jamestown, Tennessee, for the appellant, Lester Arnold Clouse

Paul G. Summers, Attorney General and Reporter; Helena Walton Yarbrough, Assistant Attorney General; William Edward Gibson, District Attorney General; Howard Lee Chambers, pro tem, Assistant District Attorney General, for the appellee, the State of Tennessee.

**OPINION**

Officer James Gibbons testified that on October 26, 1999, the Putnam County Sheriff's Department received several reports of fires. The fires were close to the side of the road, along the ditch line. Some of the fires were close together, and some were several hundred yards apart. The fires got smaller as Officer Gibbons traveled along Mt. Herman Road. Officer Gibbons received a report that someone driving a small black car had set the fires. Officer Gibbons stopped a vehicle matching that description on Mt. Herman Road in White County, approximately one mile from the Putnam County line. Defendant was a passenger in the vehicle. While Officer Gibbons ran a driver's license history on the driver of the vehicle, he observed Defendant "fumbling around in the back seat

of the vehicle.” Defendant “seemed real nervous.” Officer Gibbons arrested Defendant and the driver of the vehicle. Officer Gibbons did not observe any more fires after Defendant was taken into custody.

Officer Bill Harris of the Putnam County Sheriff’s Office testified that he was dispatched to an area where several fires were burning along Bunker Hill Road. Officer Gibbons had stopped a small black sports car when Officer Harris arrived on the scene. Officer Harris testified that Defendant was the passenger in that vehicle. Officer Harris described Defendant as uncooperative and “very nervous.” Matches were found inside the vehicle.

Kimberly Sells lived approximately one-half mile from the Putnam County line in White County. She observed a small black car driving south on Mt. Herman Road near her residence at around 4:30 p.m. on October 26, 1999. The vehicle was coming from Putnam County. Ms. Sells testified that the passenger in the vehicle rolled down the car window and yelled, “Hey, baby.” Ms. Sells identified Defendant as the passenger in the vehicle. As the vehicle drove by, Ms. Sells observed a small fire in the ditch line just north of her residence. Ms. Sells observed another small fire south of her residence just as the car crested a hill. Both fires were on the right side of the road if traveling south. Shortly thereafter, Ms. Sells observed several law enforcement vehicles in pursuit of the vehicle. On the following day, Ms. Sells gave a statement to the police.

Jerry Stone owned property on Bob Bullock Road in South Putnam County one half mile from the White County line. On October 26, 1999, Mr. Stone returned home from work sometime between 4:00 and 4:15 p.m. He observed a fire in his yard close to the road.

Wendell Rhule testified that on October 26, 1999, at approximately 4:00 p.m., he observed a small dark colored car stop at Howard Cemetery on Burgess Mill Road in Putnam County. Mr. Rhule saw an individual get out of the vehicle and set a small fire. The vehicle then drove past Mr. Rhule, and Mr. Rhule observed someone from that vehicle start another fire on the right side of the road. Mr. Rhule could not identify the individual that he saw start the fires.

Adelle Bennett testified that a wooded area of her property on Allen Road in Putnam County was on fire at around 4:00 p.m. on October 26, 1999. Several fires were set along the roadside in front of Ms. Bennett’s residence.

Donnie Julian testified that he owned property on Stone Seminary Road in Putnam County approximately one-half mile from the White County line. On October 26, 1999, sometime between 3:30 and 4:30 p.m., two fires were set on each corner of his property on the side of the road. The fires burned several pine trees. Mr. Julian saw a dark colored car leaving the scene of the fires.

Bill Gill noticed two fires burning on his property on Mt. Herman Road at approximately 3:00 p.m. on October 26, 1999.

James League of the Tennessee Department of Agriculture Division of Forestry testified that the conditions on October 26, 1999, were very dry. Mr. League did not issue any burn permits on that day. Mr. League also testified that two fires were set on state owned property. A fire burned at the intersection of Wendell Cliff Road and Burgess Falls Road, and another burned at Ditty Road and Highway 56.

Willard Nash testified that a fire burned on his property on Baxter Road. The fire destroyed over one-half an acre and about twenty bales of hay. Mr. Nash testified that he knew Defendant. Defendant lived on Cookeville Boat Dock Road, approximately four or five miles from Mr. Nash's property. Mr. Nash saw the fire at approximately 2:30 or 3:00 p.m.

Glenn Whittaker owned 83 acres in South Putnam County. Mr. Whittaker was out of town on October 26, 1999, when one field on his property was damaged by fire, and 60 large rolls of hay were destroyed.

Bricey Wright testified that 20 acres burned on her property on Rock Island Road, just off Burgess Falls Road.

Roger Julian testified that a fire was set on his property in a field adjacent to Old Sparta Road. Mr. Julian also noticed several fires on Bob Bullock Road near his property.

Robert Winchester owned property on Jones Road and Rock Island Road. Several pine trees burned along the road. Mr. Winchester knew Defendant and considered himself to be "friends" with Defendant; however, Mr. Winchester believed that Defendant did not know where his property was.

A fire burned seven or eight acres along the edge of the road on Gary Evins' property on Short Hill Road.

Guy Barbutis, a former sergeant for the Erie-Lakawanna Railroad Police Department, testified for the defense in this case. Mr. Barbutis was Defendant's neighbor. On October 26, 1999, Mr. Barbutis walked his dog and checked his mailbox between 2:30 and 3:30 p.m. Defendant operated a junk yard, and Mr. Barbutis saw Defendant handling a piece of glass. Mr. Barbutis waved at Defendant and then went home. There was no testimony as to the distance between Defendant's house and the location of the fires. Defendant did not testify.

### **Sufficiency of the Evidence**

When evaluating the sufficiency of the evidence, we must determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Keough*, 18 S.W.3d 175, 180-81 (Tenn. 2000) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979)). This Court must afford the prosecution the strongest legitimate view of the evidence in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Keough*, 18 S.W.3d at 181 (citing *State v. Bland*, 958

S.W.2d 651, 659 (Tenn. 1997)). Questions regarding the credibility of the witnesses; the weight to be given the evidence; and any factual issues raised by the evidence are resolved by the trier of fact. *Bland*, 958 S.W.2d at 659. A guilty verdict removes the presumption of innocence and replaces it with one of guilt. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the defendant has the burden of proving that the evidence at trial was insufficient to convict. *Id.*

A person is guilty of the offense of setting fire to land when the person “knowingly damages any personal property, land, or other property, except buildings or structures covered under § 39-14-301, by means of a fire or explosion: (1) without the consent of all persons who have a possessory or proprietary interest therein; or (2) with intent to destroy or damage such property for any unlawful purpose.” Tenn. Code Ann. § 39-14-303(a).

Although the evidence of the defendant's guilt is circumstantial in nature, circumstantial evidence alone may be sufficient to support a conviction. *State v. Tharpe*, 726 S.W.2d 896, 899-900 (Tenn. 1987); *State v. Gregory*, 862 S.W.2d 574, 577 (Tenn. Crim. App. 1993). The circumstantial evidence, however, must exclude every other reasonable theory or hypothesis other than guilt. *Tharpe*, 726 S.W.2d at 900. In addition, “it must establish such a certainty of guilt of the accused as to convince the mind beyond a reasonable doubt that [the defendant] is the one who committed the crime.” *Id.* (citations omitted).

The evidence adduced at trial showed that on the afternoon of October 26, 1999, Defendant was riding in the passenger side of a small black car. Wendell Rhule saw someone in a small dark colored car start two fires at approximately 4:00 p.m. Donnie Julian also saw a small black car driving away from the scene of fires burning on his property. Kimberly Sells saw a small black car drive by her property in White County, just south of Putnam County, at approximately 4:30 p.m. Ms. Sells testified that two fires were started on the right side of the road as the car drove past her property. Ms. Sells identified Defendant as the passenger in that vehicle. The property owners testified that the fires were burning along the roadside in the right ditch. The property owners noticed the fires burning between 3:00 and 4:30 p.m. The damaged property was located in the southern party of Putnam County. Ten property owners testified that damage by fire was caused to their property. James League testified that two fires were set on property belonging to the State. The property owners testified that they did not give their consent to burn their land. After Defendant was taken into custody, the fires ceased. Viewed in a light most favorable to the State, the evidence is sufficient for any reasonable trier of fact to conclude that Defendant knowingly set fire to land.

## CONCLUSION

The judgments of the trial court are affirmed.

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THOMAS T. WOODALL, JUDGE